tion in the statute allowing sales by bakers on Sunday did not apply to those merely dealing in the products of bakeries. The delivery of milk on Sunday has been held to be a work of necessity, *City of Topeka* v. *Hempstead,* 58 Kan. 328; but in *Com.* v. *Martin,* 7 Pa. Co. Ct. 154, it was held that the sale of milk was a "worldly employment" and prohibited by the Sunday Act. The sale and delivery of ice or fresh meat on Sunday is not a work of necessity. *State* v. *James, supra.* The sale of soda-water and fruit is not a work of necessity. *Com.* v. *Hengler, supra; Gulfport* v. *Stratakos,* 90 Miss. 489. It has been held that publishing and circulating Sunday papers is not a work of necessity. *Com.* v. *Matthews,* 152 Pa. St. 166; *Com.* v. *Dale,* 144 Mass. 363. The sale of cigars is not a work of necessity, *State* v. *Ohmer,* 34 Mo. App. 115; and this is true although the sale be made to a habitual smoker, *Mueller* v. *State,* 76 Ind. 310. The principal case seems indicative of a present tendency of the Courts toward increasingly liberal constructions of the term "necessity" as applied to Sunday statutes.

TORTS—LIABILITY OF MASTER FOR TORT BY INSANE SERVANT.—Conductor on defendant's railway train assaulted, cursed, and abused plaintiff. Defense was that the conductor was insane. *Held,* insanity of conductor was no defense. *Chesapeake & O. Ry. Co.* v. *Francisco* (Ky. 1912), 148 S. W. 46.

By the great weight of athority, an insane person, to the extent of compensation, is just as responsible for his torts as a sane person, except, perhaps, for those torts in which malice is a necessary ingredient. *Feld* v. *Borodofski,* 87 Miss. 727, 40 So. 816; *Ullrich* v. *N. Y. Press Co.,* 50 N. Y. Supp. 788, 23 Misc. Rep. 168; *McIntyre* v. *Sholty,* 24 Ill. App. 605; *Cross* v. *Kent,* 32 Md. 581; *Jewell* v. *Colby,* 66 N. H. 399, 24 Atl. 902; *Kirby* v. *Schoonmaker,* 3 Barb. 46; *Young* v. *Young* (Ky. 1910), 132 S. W. 155; *Bollinger* v. *Rader* (N. C. 1910), 69 S. E. 497; *Moore* v. *Horne* (N. C. 1910), 69 S. E. 409. Compare *Williams* v. *Hays,* 157 N. Y. 541, 52 N. E. 589. In the principal case the court reasons that since the insane person is liable for his torts, an employer cannot plead a servant's insanity as a defense to an action against him for the torts of such servant. It is also true that a carrier is liable for personal injuries to passengers resulting from its failure to employ competent servants. *Caveny* v. *Neely,* 43 S. C. 70, 20 S. E. 806; *Grand Rapids & I. R. Co.* v. *Ellison,* 177 Ind. 234, 20 N. E. 135; *McAllister* v. *People's Ry. Co.* (Del.) 4 Penn. 272; 54 Atl. 743; *Blumenthal* v. *Union Electric Co.,* 129 Ia. 322, 105 N. W. 588; *Hansberger* v. *Sedalia Electric Ry., L. & P. Co.,* 82 Mo. App. 566.

WILLS — CONSTRUCTION — SPENDTHRIFT TRUSTS. — Under a devise to two grandchildren, subject to a trust to take, hold, and manage the estate so devised until certain contingencies, enough only of the profits thereof were to be used in the meantime for education and support. The contingencies were that if either died before children born, his share of the estate should go to the other, and if they both died without children born, their share of the estate should be distributed to the other beneficiaries. *Held,* that since this was a spendthrift trust, it continued until the death of the survivor. *McCoy* v. *Houck* (Ind. 1912), 99 N. E. 97.

Restraints on alienability are little favored in law. GRAY, RESTRAINTS ON ALIENATION, § 113. And in England spendthrift trusts are under that ban. *ibid*, § 167j. The rule there is that a trust may be so limited that it shall not take effect unless the beneficiary is free from all debt, or that his estate shall cease upon his becoming insolvent, but the cestui que trust cannot hold and enjoy his interest entirely free from the claims of his creditors. POMEROY, EQUITY JURISPRUDENCE, (3d ed.), § 989. This was at one time the weight of authority in this country, but since the decision of *Nichols* v. *Eaton*, 91 U. S. 716, the current seems to have set in the other direction, and bequests are construed as spendthrift trusts where such are incapable of being seen with the naked eye. See 10 AM. L. REV. 591. Such a trust has been inferred from the fact that only the income was given and there was a trustee interposed. *Stambaugh's Estate*, 135 Pa. St. 586; PERRY, TRUSTS AND TRUSTEES, § 386a, note; POMEROY, EQ. JUR. (3d ed.) p. 1843, note. The fact that the father of these beneficiaries had been a profligate and a spendthrift, and had during his life squandered a large patrimony, seems to be the determining factor in this case, since the same court in regard to the same will had previously held that this was not a spendthrift trust. *Devin* v. *McCoy* (Ind. 1911), 93 N. E. 1013.

WILLS—ELECTION TO TAKE UNDER OR AGAINST A WILL—EFFECT IN ANOTHER STATE.—A wife in Illinois died there owning lands in that state and in Kansas. She left a will giving her husband a life estate in all of her property, after which it was to go to the other heirs in designated proportions. In Illinois the law gives the husband a life estate in one-third of the lands of which the wife died seised; in Kansas the husband is entitled to one-half of such lands in fee. The husband without making an express election in Illinois took possession of and enjoyed the rights conferred upon him by the will in the Illinois lands, but did nothing whatsoever in regard to the Kansas lands. Under the law in Illinois this was a valid election to take under the will as to the lands. *Held* that although under the law of Kansas the presumption is that a husband or wife in such a case elects to take under the law, nevertheless the election, made in Illinois, to take under the will was effective as to the Kansas lands. *Martin* v. *Battey* (Kan. 1912), 125 Pac. 88.

The court seems to assume that the question is one of interpretation, one of ascertaining the intention of the testator. This would be true if the issue were whether the devisee should take both under the will and also under the law. MINOR, CONFLICT OF LAWS, § 145, and such is the point of most of the cases cited, viz.; *Bolling* v. *Bolling*, 88 Va. 524; *Staigg* v. *Atkinson*, 144 Mass. 564; *Atkinson* v. *Staigg*, 13 R. I. 725. But it does not appear that any such contention was made, and it is submitted that the intention of the testator has nothing to do with the privilege of election but that such is allowed in direct opposition to the intention of the testator as expressed in the will. The right to oppose a will and defeat it is a qualification of testamentary power and hence governed by lex rei sitae. STORY, CONFLICT OF LAWS, § 474, § 479c. And it is well established that all questions as to the effect of the will are governed so far as it relates to real property by the lex rei sitae. I JARMAN,